



Committee On: Banking, Commerce and Insurance

Title: Adopt the Uniform Trust Code

Advanced to General File

Indefinitely Postponed

1	Absent	Senator Johnson
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LB 130 (Landis) would enact the Uniform Trust Code (UTC) as approved by the National Conference of Commissioners on Uniform State Laws in 2000. The UTC provides a single comprehensive statute governing trust law. It is a comprehensive default act. The UTC contains provisions on the creation of trusts, their day-to-day administration, and their modification and termination. Included are such matters as the procedure for transferring administration to another state, the appointment, resignation, removal, and compensation of a trustee, and the duties and management powers of a trustee.

LB 130, as introduced, was finalized by a study group called for and assembled pursuant to interim study resolution LR 367 (Landis) of 2002. The study group developed non-uniform changes in the official text of the UTC and amendments to existing Nebraska statutes in order to properly incorporate the UTC within the framework of Nebraska law. Those changes and amendments have been made a part of this bill and are explained in detail in the study group's final report, Comments and Recommendations for Enactment of a Nebraska Uniform Trust Code, December 2002, submitted to the Banking, Commerce and Insurance Committee pursuant to LR 367.

The bill, section by section, contains the following provisions (with the official text's section numbering shown in parentheses):

Article 1

General provisions and definitions

Section 1. Short title. (UTC Section 101)

Section 2. Scope. (UTC Section 102)

Section 3. Definitions. (UTC Section 103)

Section 4. Knowledge. (UTC Section 104)

Section 5. Default and mandatory rules. (UTC Section 105)

Section 6. Common law of trusts; principles of equity. (UTC Section 106)

Section 7. Governing law. (UTC Section 107)

Section 8. Principal place of administration. (UTC Section 108)

Section 9. Methods and waiver of notice. (UTC Section 109)

Section 10. Others treated as qualified beneficiaries. (UTC Section 110)

Section 11. Nonjudicial settlement agreements. (UTC Section 111)

Article 2

Judicial Proceedings

Section 12. Role of court in administration of trust. (UTC Section 201)

Section 13. Jurisdiction over trustee and beneficiary. (UTC Section 202)

Section 14. Subject-matter jurisdiction. (Non-UTC section based on Section 30-2211)

Section 15. Venue. (UTC Section 204)

Section 16. Duty to register trusts. (Transferred and reassigned Section 30-2801)

Section 17. Registration procedures. (Transferred and reassigned Section 30-2802)

Section 18. Clerk of court shall keep records and certified copies. (Non-UTC section based on Section 30-2214)

Section 19. Effect of registration. (Transferred and reassigned Section 30-2803)

Section 20. Registration, qualification of foreign trustee. (Transferred and reassigned Section 30-2805)

Section 21. Appeals; manner. (Non-UTC section based on Section 30-2217)

Article 3

Representation

Section 22. Representation: basic effect. (UTC Section 301)

Section 23. Representation by holder of general testamentary power of appointment. (UTC Section 302)

Section 24. Representation by fiduciaries and parents. (UTC Section 303)

Section 25. Representation by person having substantially identical interest. (UTC Section 304)

Section 26. Appointment of representative. (UTC Section 305)

Article 4

Creation, validity, modification, and termination of trust

Section 27. Methods of creating trust. (UTC Section 401)

Section 28. Requirements for creation. (UTC Section 402)

Section 29. Trusts created in other jurisdictions. (UTC Section 403)

Section 30. Trust purposes. (UTC Section 404)

Section 31. Charitable purposes; enforcement. (UTC Section 405)

Section 32. Creation of trust induced by fraud, duress, or undue influence. (UTC Section 406)

Section 33. Evidence of oral trust. (UTC Section 407)

Section 34. Trust for care of animal. (UTC Section 408)

Section 35. Noncharitable trust without ascertainable beneficiary. (UTC Section 409)

Section 36. Modification or termination of trust; proceeding for approval or disapproval. (UTC Section 410)

Section 37. Modification or termination of noncharitable irrevocable trust by consent. (UTC Section 411)

Section 38. Modification or termination because of unanticipated circumstances or inability to administer trust effectively. (UTC Section 412)

Section 39. Cy Pres. (UTC Section 413)

Section 40. Termination of uneconomic trust. (UTC Section 414)

Section 41. Reformation to correct mistakes. (UTC Section 415)

Section 42. Modification to achieve settlor's tax objectives. (UTC Section 416)

Section 43. Combination and division of trusts. (UTC Section 417)

Section 44. Separate writing identifying disposition of tangible property. (Non-UTC section based on Section 30-2338)

Section 45. Renunciations. (Non-UTC section)

Article 5

Creditor's claims; spendthrift and discretionary trusts

Section 46. Rights of beneficiary's creditor or assignee. (UTC Section 501)

Section 47. Spendthrift provision. (UTC Section 502)

Section 48. Exceptions to spendthrift provision. (UTC Section 503)

Section 49. Discretionary trusts; effect of standard. (UTC Section 504)

Section 50. Creditor's claim against settlor. (UTC Section 505)

Section 51. Overdue distribution. (UTC Section 506)

Section 52. Personal obligations of trustee. (UTC Section 507)

Article 6
Revocable trusts

Section 53. Capacity of settlor or revocable trust. (UTC Section 601)

Section 54. Revocation or amendment of revocable trust. (UTC Section 602)

Section 55. Settlor's powers; powers of withdrawal. (UTC Section 603)

Section 56. Limitation on action contesting validity of revocable trust; distribution of trust property. (UTC Section 604)

Article 7
Office of trustee

Section 57. Accepting or declining trusteeship. (UTC Section 701)

Section 58. Trustee's bond. (UTC Section 702)

Section 59. Cotrustees. (UTC Section 703)

Section 60. Vacancy in trusteeship; appointment of successor. (UTC Section 704)

Section 61. Resignation of trustee. (UTC Section 705)

Section 62. Removal of trustee. (UTC Section 706)

Section 63. Delivery of property by former trustee. (UTC Section 707)

Section 64. Compensation of trustee. (UTC Section 708)

Section 65. Reimbursement of expenses. (UTC Section 709)

Article 8
Duties and powers of trustee

Section 66. Duty to administer trust. (UTC Section 801)

Section 67. Duty of loyalty. (UTC Section 802)

Section 68. Impartiality. (UTC Section 803)

Section 69. Prudent administration. (UTC Section 804)

Section 70. Costs of administration. (UTC Section 805)

Section 71. Trustee's skills. (UTC Section 806)

Section 72. Delegation by trustee. (Non-UTC section)

Section 73. Powers to direct. (UTC Section 808)

Section 74. Control and protection of trust property. (UTC Section 809)

Section 75. Recordkeeping and identification of trust property. (UTC Section 810)

Section 76. Enforcement and defense of claims. (UTC Section 811)

Section 77. Collecting trust property. (UTC Section 812)

Section 78. Duty to inform and report. (UTC Section 813)

Section 79. Discretionary powers; tax savings. (UTC Section 814)

Section 80. General powers of trustee. (UTC Section 815)

Section 81. Specific powers of trustee. (UTC Section 816)

Section 82. Distribution upon termination. (UTC Section 817)

Article 9

Prudent Investor Rule

Section 83. Prudent investor rule. (Transferred and reassigned Section 8-2202)

Section 84. Standard of care; portfolio strategy; risk and return objectives. (Transferred and reassigned Section 8-2203)

Section 85. Diversification. (Transferred and reassigned Section 8-2204)

Section 86. Duties at inception of trusteeship. (Transferred and reassigned Section 8-2205)

Section 87. Reviewing compliance. (Transferred and reassigned Section 8-2209)

Section 88. Delegation of investment and management functions. (Transferred and reassigned Section 8-2210)

Section 89. Language invoking standard of the rule. (Transferred and reassigned Section 8-2211)

Article 10

Liability of trustees and rights of persons dealing with trustee

Section 90. Remedies for breach of trust. (UTC Section 1001)

Section 91. Damages for breach of trust. (UTC Section 1002)

Section 92. Damages in absence of breach. (UTC Section 1003)

Section 93. Attorney's fees and costs. (UTC Section 1004)

Section 94. Limitation of action against trustee. (UTC Section 1005)

Section 95. Reliance on trust instrument. (UTC Section 1006)

Section 96. Event affecting administration or distribution. (UTC Section 1007)

Section 97. Exculpation of trustee. (UTC Section 1008)

Section 98. Beneficiary's consent, release, or ratification. (UTC Section 1009)

Section 99. Limitation of personal liability of trustee. (UTC Section 1010)

Section 100. Interest as general partner. (UTC Section 1011)

Section 101. Protection of person dealing with trustee. (UTC Section 1012)

Section 102. Certification of trust; use; form. (Transferred and reassigned Section 30-3701)

Section 103. Certificate of trust; contents. (Transferred and reassigned Section 30-3702)

Section 104. Certification of trust; additional information authorized. (Transferred and reassigned Section 30-3703)

Section 105. Reliance upon certification of trust; liability. (Transferred and reassigned Section 30-3704)

Section 106. Certification of trust; use; effect. (Transferred and reassigned Section 30-3705)

Section 107. Applicability. (Transferred and reassigned Section 30-3706)

Article 11

Miscellaneous provisions

Section 108. Uniformity of application and construction. (UTC Section 1101)

Section 109. Electronic records and signatures. (UTC Section 1102)

Section 110. Application to existing relationships. (UTC Section 1106)

Sections 111 to 139. Amendatory sections to fit the UTC within the existing framework of Nebraska statutes.

Section 140. Operative date.

Section 141. Severability clause.

Section 142. Repeals of amendatory sections.

Section 143. Outright repeals.

Explanation of amendments, if any:

1. The committee amendments would amend section 5 to make it clear that the terms of a trust may not prevail over a trustee's duty, under the UTC, to notify qualified beneficiaries of an irrevocable trust, who have attained twenty-five years of age, of the existence of the trust, the identity of the trustee, and the right of such beneficiaries to request trustee's reports.

2. The committee amendments would amend section 80 to change an erroneous use of "or" to "and".

Senator Mark Quandahl, Chairperson